opposite conclusion.[3] Congress has obviously been aware of the interplay between these various open records acts, and in the instances just noted it specifically indicated when the exemptions of one act should not apply to disclosures mandated by another. We therefore decline inferentially to limit the scope of 5 U.S.C. § 552(b)(3) where Congress has not specifically indicated an intent to do so.

Accordingly, we reverse the district court's summary judgment in favor of Painter, and remand with instructions to consider the applicability of the Privacy Act exemption (k)(5), 5 U.S.C. § 552a(k)(5), to the material sought by Painter as to which the government claimed the Privacy Act exemption applied.

REVERSED in part and REMANDED with instructions.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, a Non-Profit Corporation, under the laws of California, Plaintiff-Appellant,

v.

John McLEAN and Nancy McLean, Defendants-Appellees.

No. 79-2629
Summary Calendar.*

United States Court of Appeals, Fifth Circuit.

April 18, 1980.

In a slander suit, plaintiff moved to disqualify one of defendant's two attorneys. The United States District Court for the Middle District of Florida, Wm. Terrell Hodges, J., denied the motion and plaintiff appealed. The Court of Appeals, Alvin B. Rubin, Circuit Judge, held that: (1) the attorney's consulting with the plaintiff about a zoning matter did not bar his representing the defendant in this case where there was no evidence that any issue in this case was ever discussed with the attorney or that he had any confidential information about it, and (2) the appeal was frivolous and the defendant was entitled to damages caused by the appeal, including a reasonable attorney's fee and double costs.

Affirmed.

1. Attorney and Client ⇐21

Lawyer need not disqualify himself in matter concerning former client unless terminated employment had some substantial relationship to pending suit or unless he had received some privileged information.

2. Attorney and Client ⇐32

To warrant disqualification of counsel, there must be showing of reasonable possibility that some specifically identifiable impropriety occurred and likelihood of public suspicion must be weighed against interest in retaining counsel of one's choice. ABA Code of Professional Responsibility, Canon 9.

3. Attorney and Client ⇐21

Defense counsel in slander suit was not required to disqualify himself because plaintiff had previously consulted with him about a zoning matter where there was no evidence that any issue in slander case was

3. We note that in a recent case, *Terkel v. Kelley*, 599 F.2d 214 (7th Cir. 1975), the Seventh Circuit reached the same result we have arrived at here. That court said:

> Although the Freedom of Information Act does not contain a comparable exemption [to Privacy Act exemption (k)(5)], we agree with the lower court that the two statutes must be read together, and that the Freedom of Information Act cannot compel the disclosure of information that the Privacy Act clearly contemplates to be exempt.

599 F.2d at 216. Our holding, however, is not so broad. We only hold that material exempted from disclosure under the provisions of the Privacy Act are matters "specifically exempted from disclosure by statute" under 5 U.S.C. § 552(b)(3).

* Fed.R.App.P. 34(a); 5 Cir. R. 18.

ever discussed with counsel or that he had any confidential information about it.

4. Federal Civil Procedure ⇐274

Where appeal from district court's refusal to disqualify opposing counsel was frivolous, appellees were entitled to damages caused by appeal, including reasonable attorney's fee and double costs. F.R.A.P. Rule 38, 28 U.S.C.A.

Allen L. Jacobi, North Miami, Fla., for plaintiff-appellant.

Baskin & Sears, Robert K. Hayden, Clearwater, Fla., for defendants-appellees.

Appeal from the United States District Court for the Middle District of Florida.

Before GEE, RUBIN and POLITZ, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

The Church of Scientology of California filed a slander suit against John and Nancy McLean, citizens of Canada and ex-Scientologists. The McLeans are represented by Robert Hayden, a partner in the law firm of Baskin & Sears. Elihu Berman is associated with that law firm and plans to assist Hayden in defending the suit. Before Berman joined that firm, the church had consulted with him about a zoning matter. It has filed a motion to disqualify Berman and the law firm in this suit on the basis that "topics were discussed [with Berman] which are substantially related to the cause of action before the court." The trial judge denied the motion as it related to Hayden and the law firm, and reserved ruling on the motion as it pertained to Berman. Later, he also denied the motion as to Berman. This appeal is from that order; it apparently, therefore, pertains only to the ruling concerning Berman.

Whether an order refusing to disqualify counsel is appealable is an issue now before this court en banc. *Wilson P. Abraham Construction Corp. v. Armco Steel Corp.*, No. 79-2007, *hearing en banc ordered* (5th Cir. Oct. 22, 1979). However, we assume for the moment that there is jurisdiction because, whether or not the appeal applies only to Berman, it is groundless and there is no reason further to delay this case.

[1] The church has not offered a scintilla of evidence that any issue in this case was ever discussed with Mr. Berman or that he has any confidential information about it. While lawyers are expected to avoid even the appearance of impropriety, they are not required to sterilize their affairs to avoid baseless charges. A lawyer need not disqualify himself in a matter concerning a former client unless the terminated employment had some substantial relationship to the pending suit or unless he has received some privileged information. *See Brennan's, Inc. v. Brennan's Restaurants, Inc.*, 590 F.2d 168, 171–72 (5th Cir. 1979). *Cf. Woods v. Covington County Bank*, 537 F.2d 804, 813 (5th Cir. 1976) (former government attorney is not disqualified from civilian employment in a matter for which he had substantial responsibility in government in absence of reasonable possibility of impropriety.) The church's brief to this court asserts that, during the course of Mr. Berman's consultation with its representative,

> information was given to Mr. Berman so that he could assess the problem with which the [church] was faced and certain advice given by Mr. Berman in reference to those problems. After the consultation Mr. Berman billed the Church of Scientology of California and received compensation therefrom.

During this consultation topics were discussed which substantially related to the subject matter of the instant litigation and related to the Clearwater City Commission, including the Ex-Mayor, Gabriel Cazares, who appears on the Defendant's List of Witnesses as is also the case with one Ronald Schultz, the County Property Appraiser. The same hostilities which are the essence of the case sub judice were the very problems which the plaintiff faced in reference to the zoning problems involving the property which they wished to purchase.